

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 CHARLES SMITH; HECTOR  
11 CASAS; and BARRY NEWMAN,  
12 individually and on behalf of all others  
similarly situated,

13 Plaintiffs,

14 vs.

15 CRST VAN EXPEDITED, INC. and  
16 DOES 1 through 50,

17 Defendants.

CASE NO. 10-CV-1116 BEN (WMC)

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION TO ENFORCE  
SETTLEMENT AGREEMENT**

[Docket No. 101]

18 Presently before the Court is Plaintiffs' Motion to Enforce Settlement  
19 Agreement. (Docket No. 101.) For the reasons stated below, the Motion is  
20 **GRANTED IN PART AND DENIED IN PART**. Defendant is **ORDERED** to submit  
21 documentation of its compliance with the Settlement Agreement, as detailed below.

22 **BACKGROUND**

23 This is a class action brought by truck drivers against their employer for failure  
24 to pay minimum wages during certain stages of the company's driver training program  
25 ("DTP") and related violations of California Business and Professions Code Section  
26 17200. The class representatives are Charles Smith, Hector Casas, and Barry  
27 Newmann, and the defendant trucking company is CRST Van Expedited, Inc.  
28 ("CRST").

1 The parties agreed to a proposed settlement that Judge Irma E. Gonzalez  
 2 preliminarily approved on April 23, 2012. On September 24, 2012, the parties moved  
 3 for final approval of the settlement. The settlement provided the class with a financial  
 4 benefit of more than \$11,600,000. This included a non-reversionary \$2,625,000 cash  
 5 payment to class members and over \$9,000,000 in outstanding debt for training and  
 6 related expenses under the Driver Employment Contracts that CRST agreed to relieve.  
 7 In addition, CRST agreed to significant changes to its policies and training program,  
 8 including a full disclosure form provided to employees prior to enrollment in the  
 9 training program, temporary employee status for drivers when tested by the Department  
 10 of Motor Vehicles, payment for drivers during orientation, payment by a split mile  
 11 basis rather than \$50 per day for over-the-road training, and a \$250 bonus for all  
 12 drivers who remain employed eight months after completion of the training program.  
 13 On January 14, 2013, Judge Gonzalez granted the motion for final approval of class  
 14 action settlement.

15 Presently before the Court is Plaintiffs' Motion to Enforce Settlement  
 16 Agreement. (Docket No. 101.)

## 17 DISCUSSION

18 The Court approved and adopted the Settlement Agreement, maintaining  
 19 jurisdiction for enforcement purposes. (Settlement Agr. ¶ XII(18).) This Court has the  
 20 authority to enforce the Settlement Agreement. *See Callie v. Near*, 829 F.2d 888, 890  
 21 (9th Cir. 1987).

### 22 I. REQUEST FOR DOCUMENTATION OF COMPLIANCE WITH THE 23 SETTLEMENT AGREEMENT

24 Plaintiffs argue that they cannot determine whether CRST has implemented  
 25 several of the provisions of the Settlement Agreement. Class Counsel seeks  
 26 documentation of CRST's compliance with the disputed provisions of the Settlement  
 27 Agreement. Class Counsel argues that although CRST agreed to provide a declaration  
 28 to Class Counsel within 30 days of the date the changes were implemented, or by June

1 14, 2013, they did not receive the required declaration.

2 Each disputed provision of the Settlement Agreement will be addressed in turn.

3 **A. Collection of Debts from Settlement Class Members**

4 Class Counsel argues that it cannot determine whether the debt forgiveness  
5 portion of the Settlement Agreement has been implemented. The Settlement  
6 Agreement provides:

7 Defendant will not enforce the alleged contractual rights it believes it has  
8 to receive payment for training and related expenses owed by Settlement  
9 Class Members, which Defendant estimates is an amount in excess of  
10 \$6,900,000. The amounts owed by the Settlement Class Members will  
11 be shown on CRST's books as satisfied, and, if notified as to any issues  
12 related to those amounts, Defendant will confirm that the amounts owed  
13 have been satisfied. . . . In addition, within 30 days after the Effective  
14 Date, Defendant will notify its third-party collection agencies that the  
15 outstanding amounts owed by the Settlement Class Members in the  
16 approximate amount of \$9,000,000 have been satisfied and that further  
17 collection actions shall cease all collection efforts as of the Effective  
18 Date. . . . Defendant shall cause its third-party collection agencies to  
19 notify the credit reporting agencies that the outstanding amounts have  
20 been satisfied and that any negative references on the credit reports of the  
21 Contract Students arising out of those outstanding amounts shall be  
22 removed.

23 (Settlement Agr. § IV.2.a.)

24 As evidence of its compliance with this provision of the Settlement Agreement,  
25 CRST submits a declaration by Eric A. Baker, General Counsel of CRST. Baker  
26 testified:

27 CRST ceased all collection efforts on amounts owed by Settlement Class  
28 Members in connection with training and related expenses. CRST  
considers the outstanding amounts owed in the approximate amount of  
\$9 million to have been satisfied. Within 30 days of February 14, 2013,  
CRST notified its third-party collection agency, United Resource  
Systems, Inc. that (1) all further collection actions were to cease effective  
March 16, 2013, 30 days after February 14, 2013; (2) all amounts  
collected from Settlement Class Members to satisfy debts for training and  
related expenses after February 14, 2013 were to be returned; and (3) that  
credit agencies were to be notified that the outstanding amounts have  
been satisfied and that any negative references in the credit reports of  
Settlement Class Members arising out of those amounts were to be  
removed.

29 (Baker Decl. ¶ 4.)

1 In addition, CRST submits a declaration by Michael Lammars, President of  
2 United Resource Systems, Inc. (“URS”), which states: “At the request of CRST, URS  
3 cancelled the collection accounts of class members in the Smith case as of March 15,  
4 2013, and notified credit bureaus of the cancellation of these accounts.” (Lammars  
5 Decl. ¶ 5.)

6 First, Class Counsel Douglas J. Champion argues that he was told by several class  
7 members that collection efforts on the forgiven debt for the training expenses was still  
8 occurring between the dates of preliminary approval and the effective date. (Champion  
9 Decl. ¶¶ 2-3.) Whether CRST attempted to collect the forgiven debt between the date  
10 the Court granted preliminary approval of the settlement and the February 14, 2013  
11 effective date, however, is irrelevant. CRST did not agree to suspend its collection  
12 efforts during this time.

13 Second, Class Counsel submits a declaration by Class Member William Scott  
14 Rizzie as evidence of CRST’s alleged noncompliance. Rizzie testifies that on October  
15 10, 2013, he contacted an organization that provides consumers with their credit reports  
16 by telephone. (Rizzie Decl. ¶ 4.) During that telephone call, Rizzie allegedly learned  
17 that a \$5,285 debt to CRST was still listed on his credit report. (*Id.*) On October 14,  
18 2013, he obtained a written copy of his credit report which confirmed the debt was  
19 listed. (*Id.*) In addition, Rizzie testifies that he received a telephone call from a  
20 collection agency after February 14, 2013, seeking payment for the alleged debt. (*Id.*  
21 ¶ 5.)

22 In regards to the alleged telephone call from a collection agency, CRST points  
23 to Lammars’s declaration. Lammars testifies that URS’s records relating to Rizzie’s  
24 collection account “indicate Mr. Rizzie contacted URS on February 19, 2013, and  
25 advised a URS representative that he was a class member in this case, and that his debt  
26 to CRST has been discharged by virtue of the settlement of the case. Mr. Rizzie was  
27 advised by the URS representative that his account would be closed and removed from  
28 the credit bureaus. On February 28, 2013, URS cleared all balances associated with

1 Mr. Rizzie's collection account, and on March 2, 2013, URS notified the credit bureaus  
 2 that Mr. Rizzie's collection account balance was zero." (Lammers Decl. ¶¶ 3-4.) In  
 3 addition, CRST argues that the telephone conversation took place on February 19,  
 4 2013, almost a month before CRST was required to instruct URS to stop collecting  
 5 class members' debts.

6 The Court finds that there is conflicting evidence in regards to whether CRST  
 7 complied with the debt forgiveness portion of the Settlement Agreement. Accordingly,  
 8 Plaintiffs' motion seeking documentation of CRST's compliance is **GRANTED**, in  
 9 regards to the collection of debt from the class members.

10 **B. Payment of California Drivers as Temporary Employees While**  
 11 **Taking the California DL 170 Driving Test**

12 Class Counsel argues that it cannot determine whether CRST has complied with  
 13 the provision of the Settlement Agreement regarding the payment of California drivers  
 14 as temporary employees while taking the California DL 170 driving test. The  
 15 Settlement Agreement provides:

16 The Contract Students will be considered "temporary employees," in  
 17 accordance with the requirements of the California Department of  
 18 Motor Vehicles ("DMV") for Defendant to act as the DMV's agent in  
 19 administering the DL 170 test, for the day on which they take the DL  
 170 test, and Defendant will pay those Contract Students the California  
 minimum wage for all "hours worked" on that day.

20 (Settlement Agr. § IV.2.b.ii.)

21 Although CRST claimed that it had complied with this provision in its  
 22 Opposition, CRST later submitted a supplemental declaration by Baker, in which he  
 23 testified that "[a]fter submitting my original declaration, I was informed that CRST had  
 24 not yet begun paying Contract Students the California Minimum Wage for all 'hours  
 25 worked' on the day they take the DL-170 commercial truck driving road test." (Baker  
 26 Suppl. Decl. ¶ 3.) In addition, Baker testified that "[u]pon learning this, I immediately  
 27 took steps to ensure that CRST implemented the change. Specifically, I instructed  
 28 personnel at CRST to identify all Contract Students who had taken the DL-170 Test

1 since May 15, 2013 and to determine the number of hours the Contract Students  
 2 worked on the[] day of the test. . . . While not all of the drivers who have taken the  
 3 DL-170 test since May 15, 2013 are entitled to compensation for six ‘hours worked’  
 4 in connection with the DL-170 test, CRST will pay those drivers the California  
 5 minimum wage rate of \$8.00 per hour for 6 hours. CRST will pay Contract Student  
 6 drivers who take the test on a going forward basis the California minimum wage rate  
 7 of \$8.00 per hour for all ‘hours worked’ in connection with the DL-170 test.” (*Id.* ¶ 4.)

8 Although Baker’s Supplemental Declaration evidences CRST’s intent to comply  
 9 with this provision, CRST does not submit evidence showing that it has completed  
 10 compliance. Accordingly, Plaintiffs’ motion seeking documentation of CRST’s  
 11 compliance is **GRANTED**, in regards to the payment of California drivers as  
 12 temporary employees while taking the California DL 170 driving test.

### 13 **C. Payment of the California Minimum Wage During CRST** 14 **Training**

15 Class Counsel argues that CRST has failed to implement the provision of the  
 16 Settlement Agreement regarding the payment of the California minimum wage for  
 17 company orientation activities during Phase 2 of the DTP. The Settlement Agreement  
 18 provides:

19 Defendant will divide the time spent in Phase 2 into two days for  
 20 qualification of the drivers under the requirements of the Federal Motor  
 21 Carrier Safety Regulations and Defendant and up to two days for  
 22 training of the drivers on Defendant’s policies and procedures. The  
 23 drivers will become Defendant’s employees at the beginning of the third  
 24 day, which is the first day of training on Defendant’s policies and  
 procedures. Those employees will be paid the California minimum  
 wage for the “hours worked” for the training on those last two days of  
 Phase 2 of the DTP.

25 (Settlement Agr. § IV.2.b.iii.)

26 As evidence of its compliance with this provision, CRST points to Baker’s  
 27 declaration, which states: “CRST has divided the time spent in Phase 2 of the DTP into  
 28 two days for qualification of the drivers under the requirements of the Federal Motor



1 Carrier Safety Regulations of the U.S. Department of Transportation, and two days for  
 2 training of the drivers on CRST's policies and procedures. The driver applicants now  
 3 become employees of CRST at the beginning of the third day of Phase 2, and the driver  
 4 applicants are paid the California minimum wage for the 'hours worked' for the  
 5 training on those last two days of Phase 2 of the DTP. This change was implemented  
 6 by May 15, 2013." (Baker Decl. ¶ 6.)

7 As evidence of CRST's noncompliance, Class Counsel points to the Online  
 8 General Information Packet, which states that the orientation for the DTP consists of  
 9 "3 or 4 days of learning CRST policies and procedures, including a road test." (Pope  
 10 Decl., Exh. B, at 7.) Although the Online Information Packet does not conclusively  
 11 show that driver applicants are not paid the California minimum wage for the 'hours  
 12 worked' for the training on the last two days of Phase 2 of the DTP, it does create a  
 13 dispute as to whether CRST complied with this provision of the Settlement Agreement.  
 14 Accordingly, Plaintiffs' motion seeking documentation of CRST's compliance is  
 15 **GRANTED**, in regards to the payment of the California minimum wage for company  
 16 orientation activities during Phase 2 of the DTP.

17 **D. Payment of Contract Students on Mileage Basis During**  
 18 **Phase 3**

19 Class Counsel argues that CRST has failed to implement the provision of the  
 20 Settlement Agreement regarding the payment of drivers on a mileage basis during  
 21 Phase 3 of the DTP. The Settlement Agreement provides: "Defendant will pay the  
 22 Contract Students during Phase 3 of the DTP on a dispatched split mile basis rather  
 23 than \$50 dollars per day." (Settlement Agr. § IV.2.b.iv.)

24 As evidence of its compliance with this provision, CRST points to Baker's  
 25 declaration, which states: "During Phase 3 of the DTP, CRST pays Contract Students  
 26 on a dispatched split-mile basis (rather than \$50 per day). This change was  
 27 implemented in or about August, 2011." (Baker Decl. ¶ 7.) Class Counsel, on the  
 28 other hand, does not submit any evidence showing that CRST has not complied with

1 this provision of the Settlement Agreement. Accordingly, Plaintiffs' motion seeking  
2 documentation of CRST's compliance is **DENIED**, in regards to the payment of drivers  
3 on a mileage basis during Phase 3 of the DTP.

4 **E. Payment of \$250 Bonus to Contract Students**

5 Class Counsel argues that CRST has failed to implement the provision of the  
6 Settlement Agreement regarding the payment of a \$250 bonus to contract students.  
7 The Settlement Agreement provides that CRST will "pay each Contract Student who  
8 successfully remains employed by Defendant for eight months beginning after the  
9 Effective Date a bonus of \$250." (Settlement Agr. § IV.2.b.v.)

10 CRST does not argue that it has already complied with this provision of the  
11 Settlement Agreement. Rather, CRST submits Baker's declaration, dated October 14,  
12 2013, in which Baker testifies that "[t]his change has been implemented, and on  
13 October 15, 2013, CRST will begin paying the \$250 bonuses to Contract Students  
14 employed by CRST for eight months beginning after February 14, 2013." (Baker Decl.  
15 ¶ 8.) Although Baker's declaration evidences CRST's intent to comply with this  
16 provision, CRST does not submit evidence showing that it has completed compliance.  
17 Accordingly, Plaintiffs' motion seeking documentation of CRST's compliance is  
18 **GRANTED**, in regards to the payment of the \$250 bonus to contract students.

19 **F. Disclosure Form**

20 Class Counsel argues that CRST has failed to implement the provision of the  
21 Settlement Agreement regarding the implementation of a new disclosure form. The  
22 Settlement Agreements provides that CRST will "implement a new disclosure form for  
23 Contract Student recruits, which will be provided to them by the recruiter no later than  
24 three days before they enter the DTP." (Settlement Agr. § IV.2.b.i.)

25 CRST does not argue that it has already complied with this provision. Rather,  
26 CRST argues that it will implement a new disclosure form for Contract Student recruits  
27 in the near future, which will be provided to them by the recruiter no later than three  
28 days before they enter the DTP. According to CRST, this disclosure form will notify



1 Contract Student recruits that attendance at the truck driver training school is not a  
 2 condition of employment and that the drivers may attend any truck driver training  
 3 school. CRST has not shown that it has complied with this provision of the Settlement  
 4 Agreement. Plaintiffs' motion seeking documentation of CRST's compliance is  
 5 **GRANTED**, in regards to the disclosure form.

## 6 **II. REQUEST TO CONDUCT DISCOVERY**

7 Class Counsel requests permission to conduct discovery to confirm that CRST  
 8 and URS have complied with the terms of the Settlement Agreement. As discussed  
 9 above, this Court grants Plaintiffs' motion for CRST to provide documentation that it  
 10 has complied with certain provisions of the Settlement Agreement. Class Counsel may  
 11 move to conduct discovery at a later date if the documentation provided proves to be  
 12 inadequate to determine compliance with the Settlement Agreement. Accordingly,  
 13 Class Counsel's request to conduct discovery is **DENIED WITHOUT PREJUDICE**.

## 14 **III. REQUEST FOR ATTORNEYS' FEES**

15 Class Counsel argues that they should be awarded attorneys' fees as a result of  
 16 having to file a motion to enforce the settlement agreement. The Settlement Agreement  
 17 provides: "[I]n any suit or court action to enforce the terms of this Agreement, the  
 18 prevailing party shall be entitled to recover attorney fees and costs." (Settlement Agr.  
 19 § XII(18).)

20 An award of attorneys' fees at this time would be premature, because the Court  
 21 has not yet determined whether CRST has complied with the Settlement Agreement.  
 22 The motion for attorneys' fees is **DENIED WITHOUT PREJUDICE**.

## 23 **CONCLUSION**

24 For the reasons stated above, the Court **GRANTS IN PART** and **DENIES IN**  
 25 **PART** Plaintiffs' Motion to Enforce Settlement Agreement and hereby **FINDS** and  
 26 **ORDERS** as follows:

27 1. Except as otherwise specified herein, the Court for purposes of this Order  
 28 adopts all defined terms set forth in the Joint Stipulation of Settlement;

1           2.     If CRST has not already done so, CRST is ordered to implement the DTP  
2 changes by **May 26, 2014** which will remain in effect not to commence until the last  
3 date when all changes to the DTP program have been implemented by CRST to the  
4 Court's satisfaction;

5           3.     CRST is ordered to provide Class Counsel with copies of the instructions  
6 from CRST to its third-party collection agents about foregoing any collection efforts  
7 on the \$9,000,000.00 and proof that such third-party collection agencies have received  
8 and implemented such instructions by **June 26, 2014**;

9           4.     CRST is ordered to provide Class Counsel with documentation that  
10 evidences third-party debt collector's statements and instructions to the credit reporting  
11 agencies that the Class Members' credit reports should indicate the outstanding  
12 amounts have been satisfied and that any negative references on the credit reports of  
13 the Contract Students arising out of those outstanding amounts shall be removed by  
14 **June 26, 2014**;

15           5.     CRST is ordered to provide Class Counsel with documentation that  
16 evidences the disclosure form is provided to new Contract Student recruits, and proof  
17 that it is provided by the recruiter no less than three days prior to the DTP by **June 26,**  
18 **2014**;

19           6.     CRST is ordered to provide Class Counsel with documentation to establish  
20 that the Contract Students are considered "temporary employees" on the day CRST  
21 administers and the day on which the Contract Students take the DL 170 test, and that  
22 such Contract Students are paid minimum wage for "all hours worked" on that day by  
23 **June 26, 2014**;

24           7.     CRST is ordered to provide Class Counsel with documentation to establish  
25 that CRST has implemented the Settlement Agreement's terms that they have divided  
26 the Contract Students' time into two days for qualification of the drivers under the  
27 requirements of the Federal Motor Carrier Safety Regulations and for up to two days  
28 for training of the drivers on Defendant's policies and procedures by **June 26, 2014**;

1 8. CRST is ordered to provide Class Counsel with documentation to establish  
2 that CRST has implemented the Settlement Agreement's terms that the Contract  
3 Students become CRST's employees at the beginning of the third day, which is the first  
4 day of training on CRST's policies and procedures by **June 26, 2014**;

5 9. CRST is ordered to provide Class Counsel with documentation to establish  
6 that CRST has implemented the Settlement Agreement's terms that all driver applicants  
7 who attend the Phase 2 of the DTP are paid the California minimum wage for the  
8 "hours worked" for the training on those last two days of the Phase 2 of the DTP by  
9 **June 26, 2014**;

10 10. CRST is ordered to provide Class Counsel with documentation to establish  
11 that CRST has implemented the Settlement Agreement's terms that CRST is paying  
12 each Contract Student who successfully remains employed by CRST for eight months  
13 beginning after the Effective Date a bonus of \$250.00 by **June 26, 2014**;


14 11. CRST is ordered to provide Class Counsel with documentation to establish  
15 the date each change as required by the Settlement Agreement has first been  
16 implemented by **June 26, 2014**.

17 12. Class Counsel's request to conduct discovery is **DENIED WITHOUT**  
18 **PREJUDICE**. Class Counsel may bring another request to conduct discovery after  
19 CRST submits the documentation of compliance ordered above, if the documentation  
20 is inadequate to show CRST's compliance with the Settlement Agreement.

21 13. Class Counsel's request for attorneys' fees is **DENIED WITHOUT**  
22 **PREJUDICE**. Class Counsel may bring another request for attorneys' fees if the  
23 Court later determines that CRST has not complied with the Settlement Agreement.

24 **IT IS SO ORDERED.**

25  
26 DATED: April 30, 2014

27   
28 HON. ROGER T. BENITEZ  
United States District Judge